



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 21, 1995

Ms. Bettye S. Springer
Attorney for the City of Waxahachie
Haynes and Boone, L.L.P.
1300 Burnett Plaza
Fort Worth, Texas 76102-6866

OR95-967

Dear Ms. Springer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32495.


The City of Waxahachie (the "city"), which you represent, received an open records request from one of its police officers for, among other things, a copy of the city police department's "Corporal's promotional exam" and certain test items that were deleted from the exam prior to its use. You contend that the requested information comes under the protection of section 552.122 of the Government Code, which protects from required public disclosure "test item[s] developed by a . . . governmental body." Because the city is clearly a "governmental body," section 552.122 is applicable to test items of the city's Civil Service department, but only where the test items constitute a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated"; the exception would not apply to evaluations of an employee's overall job performance or suitability. Open Records Decision No. 626 (1994) at 6. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* After reviewing the test items used in the examination, we conclude that they are the type of information that section 552.122 was intended to protect.

However, section 552.122 applies to information only where the release of a test item might compromise the effectiveness of future examinations. *Id.* at 4. Assuming that the city intends to re-use all of the test items contained in the examination referenced by the requestor, we believe that the public release of those items could compromise the effectiveness of future examinations and thus may be withheld pursuant to section 552.122 of the Government Code.

Whether the city may withhold the unused questions that were deleted from the examination depends on information that you have not presented to this office, namely whether and in what form the questions will be used in the future. If the city intends to use the deleted questions in their current form, we believe that, as with the test items that will be re-used, the release of these items could compromise the effectiveness of future examinations and thus may be withheld. On the other hand, if the deleted test items are either not to be used in the future, or are to be used in an altered form, it is not apparent to this office how the release of those items could substantially compromise future testing; in such instance, section 552.122 would not protect the particular test items and they would have to be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KBP/RWP/rho

Ref.: ID# 32495

Enclosures: Submitted documents

cc: Mr. Phil Pruitt
Patrol Officer
Waxahachie Police Department
216 North College
Waxahachie, Texas 75165
(w/o enclosures)